

Internal Revenue Service

Number: **200924013**

Release Date: 6/12/2009

Index Number: 141.00-00, 148.00-00

Department of the Treasury

Washington, DC 20224

Third Party Communication: None

Date of Communication: Not Applicable

Person To Contact:

, ID No.

Telephone Number:

Refer Reply To:

CC:FIP:5

PLR-143244-08

Date:

February 27, 2009

LEGEND:

City =

Bonds =

Taxable Bonds =

Sports Facility =

Park Project =

a =

Date 1 =

Date 2 =

Date 3 =

Dear _____ :

This is in response to your request for a ruling that City's allocation of a portion of the proceeds of the Bonds to expenditures for the Park Project is a permissible allocation under §§ 1.141-6(a) and 1.148-6 of the Income Tax Regulations.

Facts and Representations

You make the following factual representations. On Date 1, City issued the Bonds. City has used a specific tracing accounting method to account for investments and expenditures of gross proceeds of the Bonds. According to City's financial records, a portion of the proceeds of the Bonds (\$a) was used to finance the acquisition, construction, improvement, and equipping of a sports stadium (the "Sports Facility"). City expected, as of Date 1, that the Sports Facility would be utilized in a manner that would not result in private business use for purposes of § 141 of the Internal Revenue Code (the "Code"). Subsequently, numerous sponsorship and other private business use opportunities (including naming rights) relating to the Sports Facility have arisen. City has determined that availing itself of such opportunities would be economically beneficial.

Approximately two years after Date 1, on Date 2, City issued the Taxable Bonds. According to City's financial records, a portion of the proceeds of the Taxable Bonds (\$a) has been and will be used to acquire certain property and demolish the existing buildings thereon to expand City's park network (the "Park Project"). However, on Date 3, City allocated Taxable Bonds proceeds in the amount of \$a to expenditures for the Sports Facility. The Sports Facility was placed in service during the 18-month period prior to Date 3.

The Park Project has not and is not expected to be used in a manner that will result in private business use under § 141. City represents that since Date 1, City has had on hand at all times an amount equal to \$a plus the investment earnings thereon and, upon receipt of a favorable ruling from the Service, City will treat such amounts as allocated to the Bonds for arbitrage and rebate purposes. Subsequently, City will allocate \$a of Bond proceeds to the Park Project expenditures no later than 18 months after the dates that the actual expenditures for the Park Project were incurred.

Law and Analysis

Section 103(a) provides that, except as provided in subsection (b), gross income does not include interest on any state or local bond. Section 103(b)(1) provides that subsection (a) shall not apply to any private activity bond which is not a qualified bond (within the meaning of § 141). Section 103(b)(2) provides that subsection (a) shall not apply to any arbitrage bond (within the meaning of § 148).

Section 141(a) provides that the term “private activity bond” means any bond issued as part of an issue which (1) meets the private business use test of § 141(b)(1) and the private security or payment test of § 141(b)(2), or (2) meets the private loan financing test of § 141(c). Section 141(b)(1) provides, in general, that an issue meets the private business use test if more than 10 percent of the proceeds of the issue are to be used for any private business use.

Section 148(a) provides that the term “arbitrage bond” means any bond issued as part of an issue any portion of the proceeds of which are reasonably expected (at the time of issuance of the bond) to be used directly or indirectly (1) to acquire higher yielding investments, or (2) to replace funds which were used directly or indirectly to acquire higher yielding investments. Further, for purposes of § 148(a), a bond shall be treated as an arbitrage bond if the issuer intentionally uses any portion of the proceeds of the issue of which such bond is a part in a manner described in (1) or (2).

Section 148(f) provides, in part, that a bond is an arbitrage bond unless the issuer timely rebates to the United States the excess of the amount earned on certain nonpurpose investments over the amount that would be earned on those investments had those investments had a yield equal to the bond yield, plus any income attributable to the excess.

Section 1.141-6(a) provides that for purposes of §§ 1.141-1 through 1.141-15, the provisions of § 1.148-6(d) apply for purposes of allocating proceeds to expenditures. Thus, allocations generally may be made using any reasonable, consistently applied accounting method, and allocations under §§ 141 and 148 must be consistent with each other.

Section 1.148-6(a)(1) provides that an issuer may use any reasonably, consistently applied accounting method to account for gross proceeds, investments, and expenditures of an issue. However, under § 1.148-6(a)(3), if an issuer fails to maintain books and records sufficient to establish the accounting method for an issue and the allocation of the proceeds of that issue, the accounting and allocation rules under § 1.148-6 are applied using the specific tracing method.

Section 1.148-6(d)(1)(iii) provides that an issuer must account for the allocation of proceeds to expenditures not later than 18 months after the later of the date the expenditure is paid or the date the project, if any, that is financed by the issue is placed in service. This allocation must be made in any event by the date 60 days after the fifth anniversary of the issue date or the date 60 days after the retirement of the issue, if earlier.

By not requiring allocations to be determined when the expenditure is paid or incurred, the regulations acknowledge that day-to-day practicalities require some flexibility for when issuers must make allocations. We conclude that these practicalities also require

flexibility to change allocations, so long as those changes are made within the time frame provided under § 1.148-6(d)(1)(iii).

In the instant case, City used \$a of Bond proceeds to finance the Sports Facility and then later decided to utilize the Sports Facility in a manner that would result in private business use for purposes of § 141. City represents that since the issue date of the Bonds, City has had at least \$a on hand at all times plus the investment earnings thereon, and that it will treat such amounts as allocated to the Bonds for arbitrage and rebate purposes. Within the time frame provided under § 1.148-6(d)(1)(iii), City allocated monies other than Bond proceeds to expenditures for the Sports Facility. City now desires to allocate the \$a of Bond proceeds it had used for expenditures for the Sports Facility to expenditures for the Park Project. The reallocations would occur no later than 18 months after the expenditures for the Park Project were paid and thus would occur within the time frame provided under § 1.148-6(d)(1)(iii).

Conclusion

Accordingly, based on the information submitted and representations made, we conclude City's allocation of \$a of Bond proceeds to expenditures for the Park Project is a permissible allocation under §§ 1.141-6(a) and 1.148-6.

Except as expressly provided herein, no opinion is expressed or implied concerning the tax consequences of any transaction or item discussed or referenced in this letter.

We express no opinion regarding the allocation of taxable bond proceeds, whether spending exceptions to rebate are met, or whether interest on the Bonds is excludable from gross income under § 103(a).

This ruling is directed only to the taxpayer who requested it. Section 6110(k)(3) provides that it may not be used or cited as precedent.

In accordance with a Power of Attorney on file with this office, a copy of this letter is being sent to the authorized representative of Issuer.

The ruling contained in this letter is based upon information and representations submitted by Issuer and accompanied by a penalty of perjury statement executed by an appropriate party. While this office has not verified any of the materials submitted in support of the request for a ruling, it is subject to verification upon examination.

Sincerely,

Associate Chief Counsel
(Financial Institutions and Products)

By: _____
Johanna Som de Cerff
Senior Technician Reviewer
Branch 5